IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A. No.384 of 1999

Judgment reserved on: 23.11.2006

Date of Decision: December 28, 2006

State of H.P. …Appellant.

Versus.

Tara Chand & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Shri J.S.Guleria, Law Officer.**

For the Respondent(s): **Shri Manohar Lal Sharma, Advocate for Respondent No.1.**
Mr. K.B.Khajuria, Advocate, for respondent No. 2.
Mr. Vinod Gupta, Advocate, for respondent No.4.

Deepak Gupta, J.

This appeal by the State is directed against the judgment dated 26.3.1999 passed by the Additional Chief Judicial Magistrate, Ghumarwin in case No.237/1 of 1995 whereby he has acquitted the respondents of having committed offences under Sections 147, 149, 323, 325 & 506 of the Indian Penal Code.

The prosecution case in brief is that the five accused persons came in a jeep bearing No.HP23-1072 and beat the complainant Sanjay Kumar. Complainant Sanjay Kumar died during the pendency of the proceedings

before the trial Court. His death is, however, not related to the injuries caused to him in the incident. Complainant Sanjay Kumar was the owner and driver of tanker No.PBL-8125. According to the complainant, the accused pulled out him out of the tanker and beat him up. Challan was filed and the accused were summoned. They pleaded not guilty. The prosecution examined as many as 13 witnesses in support of its case. Thereafter the statements of the accused persons under section 313 Cr.P.C. were recorded. The accused examined one witness in their defence. The learned learned Court acquitted all the accused on the ground that the statements of the prosecution witnesses are contradictory and suspicious in nature and granted benefit of doubt to the accused. Respondent No.5 died during the pendency of the appeal and the appeal has been abated qua him.

I have heard Shri J.S.Guleria, learned Law Officer for the State-appellant and Mr. Manohar Lal learned counsel for respondent No.1, Mr. K.B.Khajuria, learned counsel for respondent No.2 and Mr. Vinod Gupta, learned counsel for the respondent No.4.

To appreciate the rival contentions of the parties, it would be pertinent to refer to the relevant prosecution evidence. PW1 Jai Prakash states that he was working in his fields from where he could see the road. He states that he heard the noise of a tanker overturning and went to the road and according to him 30 –35 people had already gathered at the spot. Sanjay Kumar driver of the tanker was covered with blood and was saying that he had been beaten up. He states that a Jeep No.HP27.1072 was standing nearby and 5 – 6 persons were sitting in the Jeep. The witness enquired from them as to why they had beaten up Sanjay Kumar but they went away. He could not identify the persons in the jeep and

states that in his presence nobody was beaten up. This witness was not cross-examined by the accused.

PW2 Ashok Kumar states that he was plying his own tractor in his own fields in the evening. He heard the noise of a tanker and somebody was saying “Maar Diya” . He then stopped his tractor and came to the spot and found that the driver of the tanker was being badly beaten up. He has identified the accused persons in Court as the persons who had beaten up the tanker driver. He further states that blood was oozing from the ear and mouth of the tanker driver. He asked the accused not to beat the injured person and they threatened him. This witness states that he was the first person who reached at the spot. According to him, the accused had parked the jeep on one side of the road and were beating up the injured. This witness has been cross-examined at length. He states that his field where he was plying the tractor is only about 100 meters from the spot. He has stated that there were 5 – 6 males in the jeep and 2 – 3 ladies were also sitting in the jeep. According to him, the accused beat the injured for 10 – 15 minutes. He also states that Jai Prakash reached soon after him and had witnessed the beating. He did not know either the accused or the injured before the incident. He also could not say why the occurrence took place. PW3 has proved the photographs which show that the tanker has gone off the road and hit the embankment on the side of the road.

PW4 Rakesh Kumar is another villager who heard the noise of the tanker. By the time he reached at the spot, other persons had also reached there. He states that a jeep was also standing there and the occupants of the jeep had beaten the tanker driver. According to this witness, the other occupants of the tanker came and the matter was

reported to the police. In cross-examination, he states that he himself did not witness anybody beating any person and he could not state how the tanker driver had suffered the injuries. PW6 Dr. Manish Kumar has proved the injuries on the injured Sanjay Kumar. He described the five separate injuries out of which three were simple in nature and two injuries were stated to be grievous in nature. In cross-examination, he has clearly stated that there is little possibility of these injuries being caused by a fall. PW7 Avtar Singh was the cleaner in the tanker. According to him on 2.7.1995 near Gochar, a Jeep No.23-1072 came from behind the truck. When it came level with the tanker the occupants of the jeep gave a signal to Sanjay Kumar to stop and when the injured Sanjay Kumar stopped the vehicle, 4 – 5 people came out of the jeep and beat up the driver Sanjay Kumar. They pulled out Sanjay Kumar from the driver's seat. Resultantly, his foot came off the brake pedal and the tanker hit the embankment on the road. He also states that Sanjay Kumar was beaten up by the accused persons and thereafter people collected on the spot. In cross-examination, he states that in the jeep 3 – 4 ladies besides the males were sitting. The accused had beaten up the injured with fist and kick blows. PW8 Dr. T.D.Tandon is a Dental Surgeon who has proved the injury on the jaw of the injured Sanjay Kumar. PW9 Jaspal Singh was also traveling in the tanker and he has also supported the prosecution case that five accused came out of the jeep and beat Sanjay Kumar. He has stated that he was also beaten up by the five accused. PW10 Rajinder Kumar states that he knew Sanjay Kumar. He states that on coming to know that Sanjay Kumar had met with an accident, he went to the Police Station, Talai. When he asked Sanjay Kumar, the injured told the witness that he had not met with an accident but had been beaten up.

They both went to the police station and lodged the FIR and thereafter the injured was examined. This witness clearly states that Munshi at the police station one P.D.Sharma belonged to the village of the accused and was helping them. This witness has been cross-examined at length but nothing substantial has been extracted in his cross-examination.

A perusal of the aforesaid evidence clearly shows that all the eye witnesses have in unambiguous and unequivocal terms stated that injured Sanjay Kumar was beaten up by the accused. The accused did not deny their presence at the spot. Their case as set up in the statement recorded under Section 313 Cr.P.C. is that the injured Sanjay Kumar parked his tanker near the jeep and started teasing the ladies sitting in the jeep. The ladies started crying. Thereafter the accused persons ran towards the jeep and then the injured Sanjay Kumar, PW7 Avatar Singh, cleaner and PW9 Jaspal Singh the other occupant of the tanker ran away and the complainant fell down and sustained injuries. To the similar effect is the statement of DW 1. Kamla Devi.

The defence taken up by the accused is so illogical and in fact supports the prosecution case. The presence of the injured as well as the two witnesses PW7 and PW9 is thereby admitted by the accused themselves. If their story is correct, then there is no explanation as to how the tanker went off the road and hit the embankment of the road. It is obvious that the prosecution witnesses are telling the truth that the injured was beaten up by the accused.

In my considered opinion, the prosecution had proved to the hilt that the accused had beaten up the injured and caused grievous injuries to him. The judgment of the learned trial Court is illogical and the trial court has picked holes in the prosecution evidence where there were

none. Minor contradictions in the statements of the prosecution witnesses recorded many years after the incident cannot be blown out of proportions. In this case not only the occupants of the tanker but even the villagers who were neither known to the accused nor to the complainant had clearly stated that the accused had beaten up the injured. There was no justification for disbelieving their testimony.

Keeping in view the aforesaid discussion, I hold that the prosecution has proved beyond doubt that the accused are guilty of having committed offences punishable under Section 323 and 325 IPC. Since all the accused have acted in concert with common object, they are also liable for the offence punishable under Section 149 IPC. However, the accused are acquitted of the charges under Section 147 and 506 IPC as there is no evidence in this regard.

Resultantly, the appeal filed by the State- appellant is allowed and the order of acquittal passed by the learned trial Court is set aside and the accused- respondents are held guilty for committing the offences under Sections 323, 325 read with Section 149 IPC.

Coming to the quantum of sentence, I find that the incident in question occurred more than 10 years back. Accused-respondent No.5 has also died during the pendency of the appeal. Therefore, keeping in view the fact that more than 10 years have elapsed, I feel that it would not be fair to sentence the accused persons to any imprisonment. Therefore, the respondents 1 to 4 are sentenced to pay a fine of Rs. 1000/- each in respect of the offence committed under section 323 IPC and in case of default of payment of fine each of the accused shall undergo simple imprisonment for one month. For the offence under Section 325 IPC, the respondents 1 to 4 are sentenced to pay a fine of Rs.5000/- each and in

default of payment of fine, they shall undergo simple imprisonment for 6 months.

The respondents 1 to 4 are directed to deposit the amount of fine with the trial Court on or before 28th February, 2007 failing which the trial Court shall issue warrants for their arrest and detention in accordance with law.

December 28, 2006. (Deepak Gupta), J.

s.